

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

U.S. DISTRICT COURT
FILED AT WHEELING, WV
JUL - 6 2009
NORTHERN DISTRICT OF WV
OFFICE OF THE CLERK

JONATHAN RODRIGUEZ,

Petitioner,

v.

Civil Action No. 5:09cv67
(Judge Stamp)

WARDEN JAMES CROSS,

Respondent.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

On April 2, 2009, the pro se¹ petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. The case was assigned Civil Action No. 2:09cv44 and assigned to the Honorable Robert E. Maxwell. On May 22, 2009, the respondent filed a Motion to Dismiss or, in the alternative, Motion for Summary Judgment. On May 26, 2009, a Roseboro Notice was issued. On June 17, 2009, the petitioner filed a document titled: "Motion for Injunctive Relief, Motion for Writ of Mandamus, and Response to Respondent's Motion to Show Cause." In addition to filing this document in the § 2241 petition pending before Judge Maxwell, the clerk's office also opened a new civil matter, using the same document, and styled it a Petition for Writ of Mandamus.

While it is not clear to the Court why a separate Mandamus action was opened, it is clear that it constitutes a duplicate filing. Accordingly, because the issues raised in the instant petition are currently pending before Judge Maxwell, it is hereby

ORDERED that the above-styled petition be, and the same hereby is **DISMISSED** without prejudice to the petitioner's right to proceed with Civil Action No. 2:09cv44, where the petitioner's

¹"Pro se" described a person who represents himself in a court proceeding without the assistance of a lawyer. Black's Law Dictionary 1341 (9th ed. 2009).

request for mandamus will be decided.

Should the petitioner choose to appeal the judgment of this Court to the United States Court of Appeals for the Fourth Circuit, he is **ADVISED** that he must file a notice of appeal with the Clerk of this Court within 30 days after the date of the entry of the judgment order. Upon reviewing the notice of appeal, this Court will either issue a certificate of appealability or state why a certificate should not issue in accordance with Federal Rule of Appellate Procedure 22(b)(1). If this court should deny a certification, the petitioner may request or circuit judge of the United States Court of Appeals for the Fourth Circuit to issue the certificate.

IT IS SO ORDERED.

The Clerk is **DIRECTED** to transmit a copy of this memorandum opinion and order to the petitioner by certified mail, return receipt requested, to his last known address as reflected on the docket sheet. In addition, the Clerk of the Court is directed to provide a copy of this Order to all counsel of record, as applicable, as provided in the Administrative Procedures for Electronic Filing in the United States District Court.

DATED:

July 6, 2009

Fredrick P. Stamp, Jr.

FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE